

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-110161
	:	TRIAL NO. B-1005795
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
DATHAN MCCURDY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

As part of a plea agreement, defendant-appellant Dathan McCurdy pleaded guilty to one count of tampering with evidence under R.C. 2921.12(A)(1) and one count of having weapons while under a disability under R.C. 2923.13(A)(2). Prior to sentencing, he filed a pro se motion to withdraw his pleas. He argued that he had wanted to go to trial, but that his attorney had advised him otherwise. The trial court overruled McCurdy's motion and sentenced him to three years' incarceration on each count, to be served concurrently.

McCurdy now appeals his convictions, presenting two assignments of error for review. In his first assignment of error, he contends that the trial court erred in overruling his motion to withdraw his pleas. A defendant does not have an absolute right to withdraw a guilty plea prior to sentencing. Our review of the record does not show that the trial court's decision to deny McCurdy's motion to withdraw his pleas was so arbitrary, unreasonable or unconscionable as to connote an abuse of discretion. See *State v. Xie* (1992), 62 Ohio St.3d 521, 584 N.E.2d 715; *State v.*

Fields, 1st Dist. No. C-090648, 2010-Ohio-4114. Therefore, we overrule McCurdy's first assignment of error.

In his second assignment of error, McCurdy argues that his sentence was excessive. Our review of the record shows that the sentence was neither contrary to law, nor so arbitrary, unreasonable or unconscionable as to connote an abuse of discretion. See *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4192, 896 N.E.2d 124; *State v. Clark*, 71 Ohio St.3d 466, 1994-Ohio-43, 644 N.E.2d 331; *State v. Jones*, 1st Dist. No. C-090137, 2010-Ohio-4116. Therefore, we overrule McCurdy's second assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HENDON and CUNNINGHAM, JJ.

To the clerk:

Enter upon the journal of the court on December 14, 2011
per order of the court _____.
Presiding Judge